

# SENATE RECORD VOTE ANALYSIS

106th Congress  
1st Session

Vote No. 94

April 28, 1999, 3:33 p.m.  
Page S-4330 Temp. Record

## Y2K LAWSUIT ABUSE PROTECTIONS/Delaying Tactics, Minimum Wage

**SUBJECT:** Y2K Act . . . S. 96. Lott motion to table the Kennedy motion to recommit with instructions.

### ACTION: MOTION TO TABLE MOTION TO RECOMMIT AGREED TO, 55-44

**SYNOPSIS:** As reported, S. 96, the Y2K Act, will enact numerous reforms to protect companies from abusive litigation related to year 2000 (Y2K) computer date change problems. Without passage of this reform bill, litigation costs could reach \$1 trillion (12 percent of the entire United States' economy), potentially crippling the competitiveness of the United States' high technology industry and raising costs for consumers and for all businesses that use computers and automated systems.

**The Kennedy motion to commit** would commit the bill to the Labor Committee with instructions to report back forthwith with language to increase the minimum wage to not less than \$5.65 per hour beginning on September 1, 1999 and to \$6.15 per hour beginning on September 1, 2000, and to extend the application of the minimum wage to the Northern Mariana Islands.

Senator Lott moved to table the Kennedy motion. A motion to table is not debatable. No debate occurred prior to the motion to table. However, some debate occurred after the Kennedy motion was tabled. Generally, the arguments were on procedure. Those favoring the motion to table objected to considering a subject that was not relevant to the Y2K issue; those opposing the motion to table favored considering a non-relevant subject.

NOTE: Numerous amendments and motions were pending at the time of the vote, as described below.

The McCain/Wyden substitute amendment would enact numerous compromise changes. (The description below is of the amendment as it was offered. After the amendment was offered, negotiations continued with concerned parties and other agreements were reached that are not reflected in the description.) Provisions of the amendment include the following: it would apply only to Y2K actions brought in State or Federal courts after February 22, 1999, and before January 1, 2003; it would not apply to any claim for personal injury or wrongful death, nor would it supersede any valid, enforceable written contract between a plaintiff and a defendant; no new cause of action would be created; State law would be superseded to the extent that it established a rule of law applicable to a Y2K action that was inconsistent with State law; clear and convincing evidence would be required for the award of punitive damages; for individuals with net worths of not more than \$500,000, and for businesses that had fewer than 25 full-time

(See other side)

YEAS (55)		NAYS (44)		NOT VOTING (1)	
Republicans (55 or 100%)	Democrats (0 or 0%)	Republicans (0 or 0%)	Democrats (44 or 100%)	Republicans (0)	Democrats (1)
Abraham	Hutchinson	Akaka	Johnson		Moynihan- <sup>3AN</sup>
Allard	Hutchison	Baucus	Kennedy		
Ashcroft	Inhofe	Bayh	Kerrey		
Bennett	Jeffords	Biden	Kerry		
Bond	Kyl	Bingaman	Kohl		
Brownback	Lott	Boxer	Landrieu		
Bunning	Lugar	Breaux	Lautenberg		
Burns	Mack	Bryan	Leahy		
Campbell	McCain	Byrd	Levin		
Chafee	McConnell	Cleland	Lieberman		
Cochran	Murkowski	Conrad	Lincoln		
Collins	Nickles	Daschle	Mikulski		
Coverdell	Roberts	Dodd	Murray		
Craig	Roth	Dorgan	Reed		
Crapo	Santorum	Durbin	Reid		
DeWine	Sessions	Edwards	Robb		
Domenici	Shelby	Feingold	Rockefeller		
Enzi	Smith, Bob	Feinstein	Sarbanes		
Fitzgerald	Smith, Gordon	Graham	Schumer		
Frist	Snowe	Harkin	Torricelli		
Gorton	Specter	Hollings	Wellstone		
Gramm	Stevens	Inouye	Wyden		
Grams	Thomas				
Grassley	Thompson				
Gregg	Thurmond				
Hagel	Voinovich				
Hatch	Warner				
Helms					

**EXPLANATION OF ABSENCE:**  
1—Official Business  
2—Necessarily Absent  
3—Illness  
4—Other

**SYMBOLS:**  
AY—Announced Yea  
AN—Announced Nay  
PY—Paired Yea  
PN—Paired Nay

employees, punitive damages would be limited to the lesser of 3 times the actual damages awarded or \$250,000, and for all other plaintiffs punitive damages would be limited to the greater of 3 times the actual damages awarded or \$250,000; punitive damage caps would not apply if there was clear and convincing evidence of specific intent to injure; punitive damages would not be awarded against government entities; injunctive relief could be sought immediately, but other actions would require prior notice and then a waiting period (if the defendant responded to the notice) during which time the defendant could attempt to resolve the problem (this waiting period would not supersede or otherwise preempt any State law or procedure with respect to the use of alternative dispute resolution for Y2K actions; the total notice and waiting period would be a maximum of 90 days); pleading standards would be enacted; unless a defendant acted with specific intent to injure or knowingly committed fraud, liability in a Y2K action would be several but not joint (each defendant would pay only the proportion of damages for which it was responsible); special rules would restore joint and several liability in certain circumstances if one of the defendants was insolvent; and a class action suit would be maintained only if the court found that the alleged defect was material to the majority of the members of the class and the suit satisfied all other prerequisites established by applicable Federal or State laws or rules.

The Lott substitute amendment to the McCain/Wyden substitute amendment would enact provisions with the same substantive effect as the McCain/Wyden amendment.

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The Lott perfecting amendment to the language proposed to be stricken by the McCain/Wyden amendment would enact provisions with the same substantive effect as the McCain/Wyden amendment.

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The Lott amendment to the Kennedy motion would strike the Kennedy instructions and would enact provisions with the same substantive effect as the McCain/Wyden amendment.

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**Those favoring the motion to table contended:**

This amendment has nothing to do with the schedule or the ability of Democrats to offer amendments to advance their agenda. Instead, it has been offered as part of the continuing effort to kill this very time-sensitive bill. Certain Democrats even filibustered the motion to proceed to the bill--in other words, they said that they would talk at length about whether or not we should start debating and amending it. We filed cloture and were finally able to get on the bill 3 days ago. The bill already has bipartisan support, but we have continued negotiations over the last several days to increase that support. However, because time is of the essence, we have made clear from the beginning that we will only consider relevant amendments. We filled up the amendment tree (except for amendments to a motion to commit), and then told our colleagues that we would be happy to clear an amendment slot for any Senator who had a relevant amendment. Not one single amendment has been offered by those Senators who say they have such problems with this bill.

Many Democrats are not interested in seeing this bill passed in any form. They are under strong pressure from the trial lawyer lobby not to enact legislation to stop abusive Y2K suits. Trial lawyers and Democrats tend to be ideological soul mates, and trial lawyers provide most of the legal campaign contributions that are given to Democratic candidates. Trial lawyers understand how much money these suits could mean for them. A panel of experts at the American Bar Association's annual convention last August predicted that the legal costs associated with Y2K will exceed those of asbestos, breast implants, tobacco, and Superfund litigation combined. The Giga Information Group has estimated that there will be \$2 to \$3 in litigation costs for every dollar actually spent fixing Y2K problems, and the estimated costs of fixing those problems range from \$200 million to \$600 million. The total litigation costs could exceed \$1 trillion, which is equal to 12 percent of the United States' annual Gross Domestic Product.

After days of delay caused from a filibuster of the motion to proceed, and after being on the bill for 3 days without a single amendment being offered by the bill's opponents, Senator Kennedy has now offered a motion to commit with an amendment attached to raise the minimum wage. Democrats say they just want a chance to debate and vote on an issue that is important to them. However, they know that this proposal is strongly opposed by many supporters of this bill, and they know that it could potentially lead to days of debate. We are not going to go along with this game. Whether we favor or oppose the minimum wage, we are not going to support the motion to table, because we believe the Kennedy motion has just been offered as a delaying tactic.

**Those opposing the motion to table contended:**

Republicans have been blocking Democrats from having their agenda considered on the floor. This problem has existed since Republicans took over Congress. For instance, last year they blocked consideration of the Patient's Bill of Rights. We could not even get a hearing on that bill. This year, we have been trying to find any vehicle to offer an amendment to raise the minimum wage, but we have been blocked. The Kennedy motion has been offered out of frustration.